IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12341 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGESH RAMABHAI PARMAR

Versus

KALOL MUNICIPALITY

Appearance:

1. Special Civil Application No. 12341 of 2001
MR MC BAROT for Petitioner No. 1-2
MR SANJAY M AMIN for Respondent No. 1
Ms.Meeta Panchal, learned AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Rule. Mr. Amin waives service of rule on behalf of respondent No.1 and Ms.Meeta Panchal, learned AGP,

waives service of rule on behalf of respondents Nos.2 and 3. By consent of the counsel appearing in the matter, rule is fixed forthwith.

2. Heard Mr.Barot, learned advocate for the petitioners and Mr.Amin for the respondent Municipality and Ms.Panchal, learned AGP, for the respondents Nos.2 and 3. This petition is pending since issuance of notice to the respondents as per order passed by the learned single Judge on 26.12.2001 and the court has issued notice which was made returnable on 21.1.2002 and in the meantime the interim relief in terms of paragraph 8(B) was granted till then. Thereafter, the matter was placed on board from time to time. However, in view of the direction, the matter was to be dealt with by the Division Bench and accordingly the Division Bench has earlier as per order dated 19.9.2003 granted time to supply second set upto 1.10.2003 conditionally, failing which the Special Civil Application shall stand dismissed for non prosecution. In view of the direction given by the Division Bench, the learned advocate for the petitioners had furnished second set.

3. Petitioners had while moving this court prayed for seeking direction that the respondent be directed, namely, respondent No.2 to regularize the encroachment made by the petitioners and by way of interim relief the petitioners had prayed that the respondent authority be restrained from demolishing the construction done by the petitioners on City Survey No.324 in Purva Vibhag, Kalol pending hearing and final disposal of this petition. As found from the order passed by the learned single Judge while issuing notice, the statement of the learned advocate was recorded to the effect that the petitioners are not served with any notice by the respondent authority and further that the premises in question does not form part of the road line nor does it cause any obstruction to the traffic. The petitioners had also annexed various documents in support of their case with regard to the action initiated by the Chief Officer, Kalol Nagarpalika under Section 108 of the Gujarat Municipalities Act, 1963 and the xerox copy of the receipt issued by the G.E.B. and the receipt issued by the Kalol Nagarpalika in favour of the petitioners. There is also one document, which is annexed in the petition, which is a letter issued by the petitioners in favour of the Collector, Mehsana on 2.2.1990 and in the said letter, the petitioners had requested the said authority to regularize the construction carried out by them in City Survey No.324 for the purpose of residence as well as for running a business.

4. Mr. Barot, learned advocate appearing for the petitioners, has accordingly prayed that the respondents be directed to regularize the encroachment found at the place where he is residing as well as carrying out business. He further states that as the possession of the premises has been protected by this court in view of the interim relief granted, he prayed that till the respondent authority decides the representation, the protection granted, which is in force, be extended.

5. An affidavit in reply is filed by Mr. K.B.Vyas, City Survey Superintendent, Kalol dated 3.4.2002 and on reading the affidavit the City Survey Superintendent has denied the case put forward by the petitioners in support of the contentions raised in paragraph 3 about issuance of circular referred to by the petitioners. While dealing with paragraph 4 of the petition, it is the case of the City Survey Superintendent that the petitioners had not approached with clean hand and suppressed material fact that no notice was issued to the petitioners. It is the case of the respondent authority that a notice was issued to the petitioners as back as in 1991 for removing encroachment and inspite of issuance of notice, petitioners had not removed such encroachment on the Government land and the petitioners had not disclosed the said fact and on that ground, the petition deserves to be dismissed. In short it is the contention of the respondent authority that the petitioners had approached directly to this High Court before approaching the authority under law and it is prayed that the interim relief granted be vacated.

6. In view of the contentions raised in the petition and the reply affidavit filed by the respondent authority and as contended by the counsel appearing in the matter, it is clear that the petitioners had already admitted that they had encroached upon the land in question and for which they have made representation as back as on 2.2.1990 to the Collector, Mehsana. As found from the affidavit filed by the respondent authority, notice was issued to the petitioners in 1991. However,the respondent authority has not dealt with in the reply affidavit about the outcome of the representation made by the petitioners, which was addressed to the Collector on 2.2.1990. In light of this, we are not examining the contentions raised by the parties on merits. However, the fact remains that the petitioners had admitted that they have encroached upon the land and for which an Application for regularization is made to the authority. Mr. Barot appearing for the petitioners further states

that the petitioners will once again make a representation to the Municipality for regularization, if time is granted upto 15.1.2004. Mr.Amin appearing for the respondent Municipality has stated that the Municipality will examine such representation in accordance with law and the same will be disposed off on or before 31.3.2004. In view of this, petitioners are directed to move the authority for making representation to the Municipal authority on or before 15.1.2004. The Municipality in turn is directed to decide the said representation of the petitioners on or before 31.3.2004. In case the Municipal authority does not find the case in favour of the petitioners and ultimately it is the case of the Municipality that the encroachment cannot be regularized, the Municipal authority shall decide the same in accordance with law and if the representation is rejected, then the order removing the encroachment shall not be implemented for a period of further two weeks from the date of the order received by the petitioners. With these observations, petition stands disposed off accordingly. Interim relief granted earlier stands vacated. Rule is discharged with no order as to costs. Direct service is permitted.

(D.K.Trivedi,J)

(Sharad D.Dave,J)

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